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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

DENNIS GINES,

Plaintiff,

v.

OREGON DEPARTMENT OF  
CORRECTIONS (ODOC), a political  
subdivision in charge of the Oregon State  
Penitentiary (OSP); COLETTE PETERS,  
Director, ODOC; JEFF PREMO,  
Superintendent, OSP; KEITH DAVIS, OSP  
Food Services Manager; RICHARD  
RIDDERBUSCH, OSP Assistant Food  
Services Manager; CARRIE COFFEY, OSP  
Health Services Manager; JULIE McCRAE,  
OSP Health Services Nurse; BRENDA  
MAGEE, OSP Health Services Nurse  
Manager; OREGON STATE BOARD OF  
NURSING (OSBN) a political subdivision of  
the executive branch of the State of Oregon;  
ROBERTA POOLE, OSBN Complaint Intake  
Coordinator,

Defendants.

Case No. 6:17-cv-00841-SI

DEFENDANTS' ANSWER TO PLAINTIFF'S  
COMPLAINT AND AFFIRMATIVE  
DEFENSES

*JURY TRIAL DEMAND*

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DEFENSES - JURY TRIAL DEMAND

RES/NA/BJC/jdi/8552439-v1

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Defendants Colette S. Peters, Jeff Premo, Keith Davis, Richard Ridderbusch, Carrie Coffey, Julie McCrae, Brenda Magee, and Roberta Poole, respond to plaintiff's Complaint and admit, deny, and allege as follows:

1.

Admit that Colette S. Peters is the Governor appointed Director of the Oregon Department of Corrections (ODOC).

2.

Admit that ODOC employed Jeff Premo as Superintendent at the Oregon State Penitentiary in Salem and who is now retired.

3.

Admit that ODOC employed Keith Davis as Food Services Manager at OSP and who is now retired.

4.

Admit that ODOC employs Richard Ridderbusch as Assistant Food Services Manager at OSP.

5.

Admit that ODOC employs Carrie Coffey, R. N., as Medical Services Manager at OSP.

6.

Admit that ODOC employed Julie McCrae as an Institution Nurse until she resigned November 2015.

7.

Admit ODOC employs Brenden MaGee as Nurse Manager at OSP.

8.

Admit Roberta Poole is the Oregon State Board of Nursing Complaint Intake Coordinator.

9.

Admit Dennis Gines, SID #12019691, is an adult admitted to the custody of ODOC on May 2, 2013, is currently housed at OSP, and has a tentative earliest release date of February 28, 2018.

10.

Except as expressly admitted herein, defendants lack sufficient information to respond to the remaining allegations in plaintiff's Complaint and therefore deny them.

11.

Defendants demand a jury trial on those claims for which a jury trial is available.

**FIRST AFFIRMATIVE DEFENSE:**  
(Qualified immunity)

12.

Defendants incorporate herein the admissions, denials, and allegations set forth above.

13.

Defendants allege that at all times relevant to plaintiff's Complaint, they were acting in good faith and within their discretion pursuant to the laws and statutes of the State of Oregon and the United States, and defendants' conduct violated no clearly established statutory or constitutional rights of which a reasonable official would have knowledge.

**SECOND AFFIRMATIVE DEFENSE:**  
(Failure to state a claim)

14.

Defendants incorporate herein the admissions, denials and allegations set forth above.

15.

Defendants allege that plaintiff has not been deprived of any right, privilege, or immunity secured by the Constitution, the laws of the United States or the State of Oregon and therefore

fails to state a claim under 42 U.S.C. §1983. *Daniels v. Williams*, 474 U.S. 327, 333, 106 S. Ct. 662, 666 (1986); see also *Davidson v. Cannon*, 474 U.S. 344, 106 S. Ct. 668, (1986).

**THIRD AFFIRMATIVE DEFENSE**  
(Prison Litigation Reform Act)

16.

Defendants incorporate herein the admissions, denials and allegations set forth above.

17.

Defendants assert all provisions of the Prison Litigation Reform Act, including the provision requiring exhaustion of administrative remedies, to plaintiff's claims.

**FOURTH AFFIRMATIVE DEFENSE**  
(Eleventh Amendment Immunity)

18.

Defendants incorporate herein the admissions, denials, and allegations set forth above.

19.

Defendants invoke their immunity from suit in federal court under the Eleventh Amendment. *NRDC v. California Dept. of Trans.*, 96 F.3d 420, 421 (9th Cir. 1996).

**FIFTH AFFIRMATIVE DEENSE**  
(Oregon Tort Claims Act (OTCA))

20.

Defendants incorporate herein the admissions, denials, and allegations set forth above.

21.

Defendants assert all provisions of the OTCA, including the provision requiring proper notice.

22.

Defendants reserve the right to assert additional defenses as may become known to them through investigation and discovery.

**JURY DEMAND**

23.

Defendants demand a jury trial pursuant to Fed. R. Civ. P. 38(b).

**WHEREFORE**, defendants pray for judgment herein denying plaintiff relief and granting defendants their costs, disbursements and attorney fees incurred in the defense hereof.

DATED October 12, 2017.

Respectfully submitted,

ELLEN F. ROSENBLUM  
Attorney General

s/ Nathaniel Aggrey

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Of Attorneys for Defendants

**CERTIFICATE OF SERVICE**

I certify that on October 12, 2017, I served the foregoing DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT AND AFFIRMATIVE DEFENSES upon the parties hereto by the method indicated below, and addressed to the following:

Dennis Gines  
SID #12019691  
Oregon State Penitentiary  
2605 State Street  
Salem, OR 97310-0505  
Plaintiff Pro Se

☐ HAND DELIVERY  
☒ MAIL DELIVERY  
☐ OVERNIGHT MAIL  
☐ TELECOPY (FAX)  
☐ E-MAIL  
☐ E-SERVE

s/ Nathaniel Aggrey  
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